

AMENDED IN ASSEMBLY APRIL 20, 2005

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 911

Introduced by Assembly Member Chu

February 18, 2005

An act to amend Sections 5027 and 22255 of the Business and Professions Code, and to amend Sections 407, 441, 451, and 452 of, and to add Sections ~~7056.4, 7056.45, 17039.3, and 23036.3~~ 6595 and 7056.45 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 911, as amended, Chu. Sales and use tax administration: property tax statements: income taxes: postponement of credits and deductions.

Under existing law, the State Board of Accountancy is required, by regulation, to prescribe or amend, among other rules, basic requirements for continuing education for several categories of licensees.

This bill would additionally authorize the board to prescribe rules requiring a licensee who renews his or her license after January 1, 2006, to complete at least 4 hours of specified continuing education in the area of the Sales and Use Tax Law, as provided.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Existing law requires retailers, as specified, to register with, and to obtain a seller's permit from, the State Board of Equalization. The State Board of Equalization issues forms for the computation and payment of sales

and use taxes collected or owed by those retailers. There is no requirement for persons, other than retailers, that owe use taxes to register with the State Board of Equalization. Consequently, those persons do not receive forms for the computation and payment of use taxes.

This bill would impose a penalty on a taxpayer who fails to timely pay or remit to the State Board of Equalization applicable qualified sales or use tax, as defined, in connection with the taxpayer's purchase or acquisition of tangible personal property. This bill would specify that the penalty would be equal to the amount of the sales or use tax applicable to the taxpayer's purchase or acquisition of that tangible personal property.

Existing property tax law requires each person owning taxable personal property with an aggregate cost of \$100,000 or more, to file a signed property statement with the county assessor. Existing law provides that the State Board of Equalization shall prescribe the information that is required to be included in the personal property statement. Existing law provides that the information contained in the personal property statement shall not be open for public inspection.

This bill would require that a personal property statement include information regarding a person's responsibility for payment of sales or use taxes and would request information with respect to that person's acquisition of tangible personal property for which sales or use tax, as applicable, has not been paid. This bill would require the county assessor to forward this information to the board. ~~This bill would authorize the State Board of Equalization to share with the Franchise Tax Board any information, as specified, that is obtained from a county assessor.~~ This bill would also provide that, for purposes of complying with the assessee's liability for use tax, the property tax statement sent to the assessee should be accompanied by the form that is used for filing the use tax return, as specified.

Existing property tax law requires assessors, on the second Monday in July, to annually transmit a statistical statement to the board, as specified.

This bill would additionally require assessors to annually provide to the board, on or before August 15, an electronic copy of the roll, as specified.

This bill, by imposing new duties on a county assessor, would constitute a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~The Personal Income Tax Law and the Corporation Tax Law allow various deductions in computing the income that is subject to the taxes imposed by those laws and authorize various credits against the taxes imposed by those laws.~~

~~This bill would impose a penalty on a taxpayer that fails to timely pay or remit to the State Board of Equalization all qualified sales or use tax, as defined, in connection with the taxpayer's purchase or acquisition of tangible personal property. This bill would specify that the penalty would be equal to the amount of deductions and credits claimed by the taxpayer in any taxable year with respect to that tangible personal property.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5027 of the Business and Professions
2 Code is amended to read:
3 5027. The board shall by regulation prescribe, amend, or
4 repeal rules including, but not limited to, all of the following:
5 (a) A definition of basic requirements for continuing
6 education.
7 (b) A licensee who plans, directs, or approves any financial or
8 compliance audit report on any governmental agency shall
9 complete a minimum of 24 hours of qualifying continuing
10 education in the area of governmental accounting and auditing or
11 related subjects during the two-year license renewal period.
12 (c) A licensee who provides audit, review, other attestation
13 services, or issues compiled financial statement reports shall,
14 during the two-year license renewal period, complete a minimum
15 of 24 hours of qualifying continuing education in the area of

1 accounting and auditing related to reporting on financial
2 statements.

3 (d) A licensee with a valid permit to practice public
4 accountancy shall, within a six-year period, complete a
5 continuing education course on the provisions of this chapter and
6 the rules of professional conduct.

7 (e) A licensee who renews his or her license after January 1,
8 2006, shall complete a minimum of four hours of the required
9 continuing education training in the Sales and Use Tax Law, as
10 set forth in Part 1 (commencing with Section 6001) of Division 2
11 of the Revenue and Taxation Code.

12 (f) A licensee on inactive status shall complete the continuing
13 education course required by subdivision (d) prior to reentering
14 public practice.

15 (g) A delineation of qualifying programs for maintaining
16 competency.

17 (h) A system of control and compliance reporting.

18 In exercising its power under this section for the interests of
19 consumer protection, the board shall establish standards which
20 will assure reasonable currency of knowledge as a basis for a
21 high standard of practice by licensees. The standards shall be
22 established in a manner to assure that a variety of alternatives are
23 available to licensees to comply with the continuing education
24 requirements for renewal of licenses and taking cognizance of
25 specialized areas of practice.

26 SEC. 2. Section 22255 of the Business and Professions Code
27 is amended to read:

28 22255. (a) The council shall issue a “certificate of
29 completion” to the tax preparer when the tax preparer
30 demonstrates that he or she has (1) completed not less than 60
31 hours of instruction in basic personal income tax law, theory, and
32 practice by an approved curriculum provider within the previous
33 18 months; and (2) completed not less than four hours of
34 instruction in the Sales and Use Tax Law, as set forth in Part 1
35 (commencing with Section 6001) of Division 2 of the Revenue
36 and Taxation Code, by an approved curriculum provider within
37 the previous 18 months, and (3) provides evidence of compliance
38 with the bonding requirement of Section 22250, including the
39 name of the surety company, the bond number, and the bond
40 expiration date. Of the required 60 hours, 45 hours shall be

1 concerned with federal tax curriculum and 15 hours shall be
2 concerned with state tax curriculum.

3 (b) A tax preparer shall complete on an annual basis not less
4 than 22 hours of continuing education, including 12 hours in
5 federal taxation, four hours in California taxation, two hours in
6 the Sales and Use Tax Law, as set forth in Part 1 (commencing
7 with Section 6001) of Division 2 of the Revenue and Taxation
8 Code, and four hours in either federal or California taxation from
9 an approved curriculum provider. The council shall issue
10 annually a "statement of compliance" when the tax preparer
11 demonstrates that he or she has (1) completed the required 20
12 hours of continuing education, and (2) provides evidence of
13 compliance with the bonding requirement of Section 22250,
14 including the name of the surety company, the bond number, and
15 the bond expiration date.

16 (c) An individual who possesses a minimum of two recent
17 years experience in the preparation of personal income tax
18 returns may petition the council to review the experience and
19 determine if it is the equivalent of the required qualifying
20 education. The council may provide that individual with a
21 "certificate of completion" if it is determined that the experience
22 is the equivalent of the required hours. Tax preparation
23 performed in situations that violate this chapter, by an individual
24 who is neither registered nor exempted, may not be used toward
25 the qualifying experience needed for registration as a tax
26 preparer.

27 SEC. 3. Section 407 of the Revenue and Taxation Code is
28 amended to read:

29 407. (a) Annually, on the second Monday in July, the
30 assessor shall transmit a statistical statement to the board,
31 supplying any statistical information which the board may
32 require, and shall supply from time to time any other information
33 required by the board.

34 (b) Annually, on or before August 15, the assessor shall
35 provide an electronic copy of the roll to the board.
36 Notwithstanding Section 649, no charge shall be levied for the
37 provision of this copy.

38 SEC. 4. Section 441 of the Revenue and Taxation Code is
39 amended to read:

1 441. (a) Each person owning taxable personal property, other
2 than a manufactured home subject to Part 13 (commencing with
3 Section 5800), having an aggregate cost of one hundred thousand
4 dollars (\$100,000) or more for any assessment year shall file a
5 signed property statement with the assessor. Every person
6 owning personal property that does not require the filing of a
7 property statement or real property shall, upon request of the
8 assessor, file a signed property statement. Failure of the assessor
9 to request or secure the property statement does not render any
10 assessment invalid.

11 (b) The property statement shall be declared to be true under
12 the penalty of perjury and filed annually with the assessor
13 between the lien date and 5 p.m. on April 1. The penalty
14 provided by Section 463 applies for property statements not filed
15 by May 7. If May 7 falls on a Saturday, Sunday, or legal holiday,
16 a property statement that is mailed and postmarked on the next
17 business day shall be deemed to have been filed between the lien
18 date and 5 p.m. on May 7. If, on the dates specified in this
19 subdivision, the county's offices are closed for the entire day,
20 that day is considered a legal holiday for purposes of this section.

21 (c) The property statement may be filed with the assessor
22 through the United States mail, properly addressed with postage
23 prepaid. For purposes of determining the date upon which the
24 property statement is deemed filed with the assessor, the date of
25 postmark as affixed by the United States Postal Service, or the
26 date certified by a bona fide private courier service on the
27 envelope containing the application, shall control. This
28 subdivision shall be applicable to every taxing agency, including,
29 but not limited to, a chartered city and county, or chartered city.

30 (d) (1) At any time, as required by the assessor for assessment
31 purposes, every person shall make available for examination
32 information or records regarding his or her property or any other
33 personal property located on premises he or she owns or controls.
34 In this connection details of property acquisition transactions,
35 including whether sales or use tax, as applicable, was paid for the
36 acquisition of the property, construction and development costs,
37 rental income, and other data relevant to the determination of an
38 estimate of value are to be considered as information essential to
39 the proper discharge of the assessor's duties.

1 (2) (A) This subdivision shall also apply to an owner-builder
2 or an owner-developer of new construction that is sold to a third
3 party, is constructed on behalf of a third party, or is constructed
4 for the purpose of selling that property to a third party.

5 (B) The owner-builder or owner-developer of new
6 construction described in subparagraph (A), shall, within 45 days
7 of receipt of a written request by the assessor for information or
8 records, provide the assessor with all information and records
9 regarding that property. The information and records provided to
10 the assessor shall include the total consideration provided either
11 by the purchaser or on behalf of the purchaser that was paid or
12 provided either, as part of or outside of the purchase agreement,
13 including, but not limited to, consideration paid or provided for
14 the purchase or acquisition of upgrades, additions, or for any
15 other additional or supplemental work performed or arranged for
16 by the owner-builder or owner-developer on behalf of the
17 purchaser.

18 (e) In the case of a corporate owner of property, the property
19 statement shall be signed either by an officer of the corporation
20 or an employee or agent who has been designated in writing by
21 the board of directors to sign the statements on behalf of the
22 corporation.

23 (f) In the case of property owned by a bank or other financial
24 institution and leased to an entity other than a bank or other
25 financial institution, the property statement shall be submitted by
26 the owner bank or other financial institution.

27 (g) The assessor may refuse to accept any property statement
28 he or she determines to be in error.

29 (h) If a taxpayer fails to provide information to the assessor
30 pursuant to subdivision (d) and introduces any requested
31 materials or information at any assessment appeals board
32 hearing, the assessor may request and shall be granted a
33 continuance for a reasonable period of time. The continuance
34 shall extend the two-year period specified in subdivision (c) of
35 Section 1604 for a period of time equal to the period of the
36 continuance.

37 (i) Notwithstanding any other provision of law, every person
38 required to file a property statement pursuant to this section shall
39 be permitted to amend that property statement until May 31 of
40 the year in which the property statement is due, for errors and

1 omissions not the result of willful intent to erroneously report.
2 The penalty authorized by Section 463 does not apply to an
3 amended statement received prior to May 31, provided the
4 original statement is not subject to penalty pursuant to
5 subdivision (b). The amended property statement shall otherwise
6 conform to the requirements of a property statement as provided
7 in this article.

8 (j) This subdivision shall apply to the oil, gas, and mineral
9 extraction industry only. Any information that is necessary to file
10 a true, correct, and complete statement shall be made available
11 by the assessor, upon request, to the taxpayer by mail or at the
12 office of the assessor by February 28. For each business day
13 beyond February 28 that the information is unavailable, the filing
14 deadline in subdivision (b) shall be extended in that county by
15 one business day, for those statements affected by the delay. In
16 no case shall the filing deadline be extended beyond June 1 or the
17 first business day thereafter.

18 (k) The assessor may accept the filing of a property statement
19 by the use of electronic media. In lieu of the signature required
20 by subdivision (a) and the declaration under penalty of perjury
21 required by subdivision (b), property statements filed using
22 electronic media shall be authenticated pursuant to methods
23 specified by the assessor and approved by the board. Electronic
24 media includes, but is not limited to, computer modem, magnetic
25 media, optical disk, and facsimile machine.

26 SEC. 5. Section 451 of the Revenue and Taxation Code is
27 amended to read:

28 451. (a) Except as provided in subdivision (b), all
29 information requested by the assessor or furnished in the property
30 statement shall be held secret by the assessor. The statement is
31 not a public document and is not open to inspection, except as
32 provided in Section 408.

33 (b) The assessor shall provide the State Board of Equalization
34 with any information requested by the assessor or furnished with
35 the property statement concerning purchases or acquisitions of
36 tangible personal property for which tax reimbursement or use
37 tax, as applicable, was not paid or remitted to the State Board of
38 Equalization.

39 ~~(c) The State Board of Equalization may provide the Franchise~~
40 ~~Tax Board any information obtained from the assessor, in~~

1 ~~accordance with subdivision (b), that will facilitate the~~
2 ~~administration of Sections 17039.3 and 23036.3.~~

3 SEC. 6. Section 452 of the Revenue and Taxation Code is
4 amended to read:

5 452. (a) For the assessment year beginning in 1968 and each
6 assessment year thereafter, the board shall prescribe in detail the
7 content of property statements, including the specific wording, to
8 be used by all assessors in the several counties, and cities and
9 counties, and shall notify assessors of those specifications no
10 later than the August 31 prior to the tax lien date on which they
11 become effective. Each assessor shall incorporate the
12 specifications on the exact form he or she proposes to use and
13 submit that form to the board for approval prior to use. The
14 property statement shall not include any question that is not
15 germane to the assessor's tax administration functions.

16 (b) In addition to the specifications required by subdivision
17 (a), the property tax statement shall include a request for
18 information concerning an assessee's purchases or acquisitions of
19 tangible personal property for which sales tax reimbursement or
20 use tax, as applicable, was not paid or remitted to the State Board
21 of Equalization or the Franchise Tax Board. The property tax
22 statement shall be accompanied with information regarding a
23 person's sales and use tax obligations with respect to the
24 purchase and acquisition of tangible personal property. For
25 purposes of complying with the assessee's liability for use tax, if
26 any, the property tax statement sent to the assessee shall be
27 accompanied by the form used for filing a use tax return. The
28 assessee shall file the return and shall remit the amount of the use
29 tax due with the Board of Equalization pursuant to Chapter 3
30 (commencing with Section 6201) of Part 1 of Division 2.

31 SEC. 7. Section 6595 is added to the Revenue and Taxation
32 Code, to read:

33 6595. (a) *A taxpayer who fails to timely pay or remit to the*
34 *State Board of Equalization applicable qualified sales or use tax*
35 *imposed in connection with the taxpayer's purchase or*
36 *acquisition of qualified tangible personal property shall pay a*
37 *penalty equal to the amount of the qualified sales or use tax.*

38 (b) *For purposes of this section, "qualified sales or use tax"*
39 *means those taxes imposed under the Sales and Use Tax Law*

1 *(Part 1 (commencing with Section 6001)) with respect to the*
2 *purchase or acquisition of qualified tangible personal property.*

3 *(c) For purposes of this section, "qualified tangible personal*
4 *property" means tangible personal property for which a*
5 *deduction is allowable under Part 10 (commencing with Section*
6 *17001) of Division 2 or Part 11 (commencing with Section 23001)*
7 *of Division 2 for depreciation in accordance with Section 167(a)*
8 *of the Internal Revenue Code.*

9 *(d) (1) The board shall prescribe regulations to implement the*
10 *provisions of this section.*

11 *(2) The board shall administer an audit program to determine*
12 *if taxpayers have paid all applicable sales or use tax on qualified*
13 *tangible personal property.*

14 *(e) This section shall apply for taxable years beginning on or*
15 *after January 1, 2005, to qualified tangible personal property*
16 *that is purchased or acquired in taxable years beginning on or*
17 *after January 1, 2002.*

18 ~~SEC. 7. Section 7056.4 is added to the Revenue and~~
19 ~~Taxation Code, to read:~~

20 ~~7056.4. Notwithstanding Section 7056 or any other provision~~
21 ~~of law, the board is authorized to provide the Franchise Tax~~
22 ~~Board any information obtained from an assessor pursuant to~~
23 ~~subdivision (b) of Section 451 or any other information the board~~
24 ~~has in its possession that will facilitate the Franchise Tax Board's~~
25 ~~administration of Sections 17039.3 and 23036.3.~~

26 ~~SEC. 8. Section 7056.45 is added to the Revenue and~~
27 ~~Taxation Code, to read:~~

28 ~~7056.45. Notwithstanding Section 7056 or any other~~
29 ~~provision of law, the board is authorized to provide to county~~
30 ~~assessors any information the board has in its records that will~~
31 ~~facilitate the assessors' tax administration functions, including,~~
32 ~~but not limited to, information obtained in audits or other~~
33 ~~investigative function that discloses unreported use tax on~~
34 ~~purchases of tangible personal property of a kind that is required~~
35 ~~to be shown on the property statement pursuant to Section 442.~~

36 ~~SEC. 9. Section 17039.3 is added to the Revenue and~~
37 ~~Taxation Code, to read:~~

38 ~~17039.3. (a) A taxpayer who fails to timely pay or remit to~~
39 ~~the State Board of Equalization all qualified sales or use tax,~~
40 ~~including any interest and penalties, imposed in connection with~~

1 the taxpayer's purchase or acquisition of tangible personal
2 property shall pay a penalty equal to the amount of deductions
3 and credits claimed by the taxpayer in any taxable year with
4 respect to that property.

5 (b) For purposes of this section, "qualified sales or use tax"
6 means those taxes imposed under the Sales and Use Tax Law
7 (Part 1 (commencing with Section 6001)) with respect to the
8 purchase or acquisition of tangible personal property.

9 (c) A taxpayer claiming credits or deductions with respect to
10 tangible personal property must retain sales or use tax receipts,
11 use tax forms, or other evidence of use tax payments to
12 substantiate the credit or deduction claims.

13 (d) (1) The board, in conjunction with the State Board of
14 Equalization, shall prescribe regulations to implement the
15 provisions of this section.

16 (2) The board shall authorize the State Board of Equalization
17 to administer an audit program to determine if taxpayers claiming
18 credits or deductions with respect to tangible personal property
19 have in fact paid all applicable sales or use tax on that property.

20 (3) The board, upon request from the State Board of
21 Equalization, shall release all of the necessary information
22 relating to the taxpayers that are being audited by the State Board
23 of Equalization as described in paragraph (2).

24 (e) This section shall apply for taxable years beginning on or
25 after January 1, 2005, to tangible personal property that is
26 acquired, constructed, or leased in taxable years beginning on or
27 after January 1, 2002.

28 SEC. 10. Section 23036.3 is added to the Revenue and
29 Taxation Code, to read:

30 23036.3. (a) A taxpayer that fails to timely pay or remit to
31 the State Board of Equalization all qualified sales or use tax,
32 including any interest and penalties, imposed in connection with
33 the taxpayer's purchase or acquisition of tangible personal
34 property shall pay a penalty equal to the amount of deductions
35 and credits claimed by the taxpayer in any taxable year with
36 respect to that property.

37 (b) For purposes of this section, "qualified sales or use tax"
38 means those taxes imposed under the Sales and Use Tax Law
39 (Part 1 (commencing with Section 6001)) with respect to the
40 purchase or acquisition of tangible personal property.

1 ~~(e) A taxpayer claiming credits or deductions with respect to~~
2 ~~tangible personal property must retain sales or use tax receipts,~~
3 ~~use tax forms, or other evidence of use tax payments to~~
4 ~~substantiate the credit or deduction claims.~~

5 ~~(d) (1) The board, in conjunction with State Board of~~
6 ~~Equalization, shall prescribe regulations to implement the~~
7 ~~provisions of this section.~~

8 ~~(2) The board shall authorize the State Board of Equalization~~
9 ~~to administer an audit program to determine if taxpayers claiming~~
10 ~~credits or deductions with respect to tangible personal property~~
11 ~~have in fact paid all applicable sales or use tax on that property.~~

12 ~~(3) The board, upon request from the State Board of~~
13 ~~Equalization, shall release all of the necessary information~~
14 ~~relating to the taxpayers that are being audited by the State Board~~
15 ~~of Equalization as described in paragraph (2).~~

16 ~~(e) This section shall apply for taxable years beginning on or~~
17 ~~after January 1, 2005, to tangible personal property that is~~
18 ~~acquired, constructed, or leased in taxable years beginning on or~~
19 ~~after January 1, 2002.~~

20 ~~SEC. 11.~~

21 *SEC. 9.* If the Commission on State Mandates determines that
22 this act contains costs mandated by the state, reimbursement to
23 local agencies and school districts for those costs shall be made
24 pursuant to Part 7 (commencing with Section 17500) of Division
25 4 of Title 2 of the Government Code.